

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**LINARES "LEE" SMITH and
FREDERICK SMITH,**

Plaintiff,

v.

BIG 10 TIRES, INC.,

Defendant.

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CASE NO.: CV-06-2:05CV918-ID

ANSWER

Comes now Defendant, Big 10 Tires Stores, Inc. (Big 10), and answers the allegations of the Complaint, as follows:

1. Paragraph 1 is a descriptive of the plaintiffs' claims only and requires no answer.

Defendant denies that any unlawful or tortuous conduct occurred.

2. Admitted, except that Defendant denies that 28 U.S.C. §§ 2201 and 2202 are jurisdictional statutes.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Defendant adopts its answers to Paragraphs 1 through 6 of the Complaint.

8. Defendant admits that L. Smith was hired as a tire technician a/k/a tire changer at Store No. 26, Atlanta Highway, Montgomery, Alabama, on March 5, 2003 and transferred to Store No. 82, Zelda Road, Montgomery, Alabama, on March 11, 2003, where he is still

employed as a tire changer. Defendant denies the remaining allegation, if any, of Paragraph 8 of the Complaint.

9. Defendant admits that Frederick Smith was hired as a tire technician a/k/a tire changer on July 31, 2002 at Store No. 82, Zelda Road, Montgomery, Alabama, transferred to Store No. 26, Atlanta Highway, Montgomery, Alabama, still as a tire changer, on August 1, 2003, transferred back to Store No. 82, Zelda Road, Montgomery, Alabama on September 4, 2003, transferred to Store No. 23, Madison Avenue, Montgomery, Alabama on March 11, 2004, as a tire changer, and quit on March 31, 2004. Frederick Smith was rehired as a tire changer on October 18, 2004 at Store No. 82, Zelda Road, Montgomery, Alabama, and quit again on April 29, 2005.

10. Denied.

11. Denied.

12. Denied.

13. Defendant admits that it does not post vacancies. Defendant denies the remaining allegations of Paragraph 13 of the Complaint.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Defendant adopts its answers to Paragraphs 1 through 19 of the Complaint.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Defendant adopts its answers to Paragraphs 1 through 26 of the Complaint.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Defendant adopts its answers to Paragraphs 1 through 33 of the Complaint.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Defendant adopts its answers to Paragraphs 1 through 39 of the Complaint.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Defendant adopts its answers to Paragraphs 1 through 47 of the Complaint.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Defendant adopts its answers to Paragraphs 1 through 53 of the Complaint.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Defendant adopts its answers to Paragraphs 1 through 59 of the Complaint.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Defendant denies that plaintiffs are entitled to the relief requested or any other relief in this lawsuit.

FIRST DEFENSE

The complaint, and each claim therein, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Each allegation not expressly admitted is denied.

THIRD DEFENSE

Plaintiffs may not challenge under Title VII any acts or omissions first occurring more than 180 days prior to the filing of a charge of discrimination with the EEOC.

FOURTH DEFENSE

Plaintiffs may not challenge under 42 U.S.C. § 1981 any acts or omissions first occurring more than two years prior to the filing of this complaint.

FIFTH DEFENSE

Plaintiffs' damages under Title VII are limited by the provisions of 42 U.S.C. § 1981a(b)(3).

SIXTH DEFENSE

Plaintiff Frederick Smith voluntarily quit his job with Defendant.

SEVENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Defendant took prompt and effective remedial action upon becoming aware of possible racial harassment.

EIGHTH DEFENSE

Plaintiffs would have been treated the same by Defendant for legitimate non-discriminatory reasons even if their race had not been considered, any such consideration being expressly denied.

NINTH DEFENSE

Plaintiffs may not challenge under Title VII any acts or omissions not made the subject of a timely charge filed with the EEOC.

TENTH DEFENSE

Plaintiffs have failed to make reasonable efforts to mitigate their damages (if any).

ELEVENTH DEFENSE

Claim four fails to state a claim upon which relief can be granted under Alabama Law.

TWELVETH DEFENSE

Claim five fails to state a claim upon which relief can be granted under Alabama Law.

THIRTEENTH DEFENSE

Claim six fails to state a claim upon which relief can be granted under Alabama Law.

FOURTEENTH DEFENSE

Claim seven fails to state a claim upon which relief can be granted under Alabama Law.

FIFTEENTH DEFENSE

Alabama has no law, and recognizes no claim, for racial discrimination or racially hostile work environment or for failure to prevent (by training or otherwise) racial discrimination or harassment.

SIXTEENTH DEFENSE

Plaintiffs may not challenge under Alabama law any acts or omissions first occurring more than two years prior to the filing of this complaint.

/s/ William C. Tidwell
WILLIAM C. TIDWELL, III
Attorney for Defendant
Big 10 Tires, Inc.

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on this 3 day of November, 2006, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to the following:

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/s/ William C. Tidwell